

MARQUIS AURBACH COFFING

10001 Park Run Drive  
Las Vegas, Nevada 89145  
(702) 382-0711 FAX: (702) 382-5816

1 **Marquis & Aurbach**  
TERRY A. COFFING, ESQ.  
2 Nevada Bar No. 4949  
MATTHEW T. CECIL, ESQ.  
3 Nevada Bar No. 9525  
10001 Park Run Drive  
4 Las Vegas, Nevada 89145  
Telephone: (702) 382-0711  
5 Facsimile: (702) 382-5816  
tcoffing@maclaw.com  
6 mcecil@maclaw.com  
Attorneys for Plaintiff

8 **UNITED STATES DISTRICT COURT**

9 **DISTRICT OF NEVADA**

10 WMCV PHASE 3, LLC, a Delaware limited  
liability company,

11 Plaintiff,

12 vs.

13 SHUSHOK & MCCOY, INC., a Texas  
14 corporation; MATTHEW J. TRAVIS, an  
individual; MATT TURNER, an individual;  
15 RICHARD BIRDWELL, an individual;  
GLOBAL ACCENTS, INC., a California  
16 corporation; COUTURE INTERNATIONAL,  
INC., a Quebec corporation; DOES I through X,  
17 inclusive; ROE ENTITIES I through X,  
inclusive,

18 Defendants.

Case No.: 2:10-cv-00661-GMN-RJJ

19  
20 **MOTION TO STRIKE RICHARD BIRDWELL'S ANSWER AND APPLICATION TO**  
21 **ENTER DEFAULT, OR IN THE ALTERNATIVE MOTION FOR AN ORDER TO**  
22 **SHOW CAUSE WHY RICHARD BIRDWELL'S ANSWER SHOULD NOT BE**  
23 **STRICKEN AND DEFAULT ENTERED**

24 Plaintiff WMCV PHASE 3, LLC, by and through its attorneys, Marquis Aurbach  
25 Coffing, hereby submits this MOTION TO STRIKE RICHARD BIRDWELL'S ANSWER AND  
26 APPLICATION TO ENTER DEFAULT, OR IN THE ALTERNATIVE, MOTION FOR AN  
27 ORDER TO SHOW CAUSE WHY RICHARD BIRDWELL'S ANSWER SHOULD NOT BE  
28 STRICKEN AND DEFAULT ENTERED.

**I. INTRODUCTION.**

Defendant Richard Birdwell's Answer should be stricken for failing to participate in this matter as required. Alternatively, this Court should issue an order to show cause why Richard Birdwell's Answer should not be stricken.

**II. FACTUAL BACKGROUND.**

1. On April 19, 2012, this Court ordered the parties, including Birdwell, to participate in a settlement conference on May 18, 2012 at 8:30 AM, ordering "All counsel of record who will be participating in the trial of this case, all parties appearing pro se, if any, and **all individual parties must be present. No exceptions are made to this requirement.**" (emphasis in original). ECF No. 124.

2. The Court served the April 19, 2012 Order on Birdwell. ECF Nos. 124, 125.

3. On May 8, 2012, this Court ordered the settlement conference changed to May 24, 2012, at 1:30 PM. ECF No. 129.

4. On May 9, 2012, the undersigned served Birdwell with the April 19, 2012 Order (ECF No. 124) and with notice that the settlement conference had been changed to May 24, 2012 via certified mail. ECF Nos. 129, 130, 131, 133, and 134.

5. Birdwell did not appear in person or telephonically for the mandatory settlement conference.

**III. LEGAL ARGUMENT.**

Birdwell refused to acknowledge this Court's authority and refused to participate in the Court Ordered mandatory settlement conference. The April 19, 2012 Order required Birdwell's presence at the settlement conference, with **no exceptions**. Nevertheless, Birdwell did not attend the settlement conference. There is no point in this Court ordering Birdwell's mandatory presence at the settlement conference, unless a sanction arises for Birdwell's failure to be present. Consequently, Plaintiff respectfully requests the Court: (1) strike Birdwell's answer from the record; and (2) enter default and allow Plaintiff to proceed with a default judgment against Birdwell. Alternatively, Plaintiff requests the Court order Birdwell to show cause why

1 this Court should not strike Birdwell's answer and allow Plaintiff to obtain default judgment  
2 against him.

3 Dated this 6<sup>th</sup> day of July, 2012.

4 MARQUIS AURBACH COFFING

5  
6 /s/ Matthew T. Cecil  
7 Terry A. Coffing, Esq.  
8 Nevada Bar No. 4949  
9 Matthew T. Cecil, Esq.  
10 Nevada Bar No. 9525  
11 10001 Park Run Drive  
12 Las Vegas, Nevada 89145  
13 Attorneys for Plaintiff  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

MARQUIS AURBACH COFFING

10001 Park Run Drive  
Las Vegas, Nevada 89145  
(702) 382-0711 FAX: (702) 382-5816

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am employed with the law firm of Marquis Aurbach Coffing, and that on the 6<sup>th</sup> day of July, 2012, I electronically filed the foregoing **Motion To Strike Richard Birdwell's Answer And Application To Enter Default, Or In The Alternative, Motion For An Order To Show Cause Why Richard Birdwell's Answer Should Not Be Stricken And Default Entered** with the Clerk of the U.S. District Court for the State of Nevada, using the CM/ECF electronic filing system which will cause the documents to be electronically served upon the following counsel of record:

Michael B. Lee, P.C.  
Michael B. Lee, Esq.  
2000 South Eastern Ave.  
Las Vegas, Nevada 89104  
*Attorney for Defendant  
Global Accents, Inc.*

William R. Urga, Esq.  
Jolly Urga Wirth Woodbury & Standish  
3800 Howard Hughes Parkway, 16<sup>th</sup> Floor  
Las Vegas, NV 89169  
*Attorneys for Defendant  
Couture International*

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

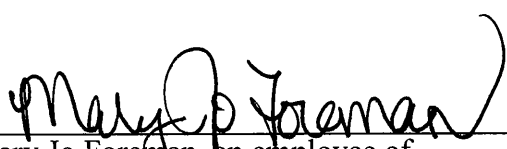
Matt Turner  
c/o Shushok & McCoy, Inc.  
2637 Ira E. Woods, Suite 100  
Grapevine, TX 76051

Matt Turner  
46 Cimarron Dr.  
Trophy Club, Texas 76262

Matthew Travis  
3300 Tori Trail  
Keller, TX 76248

Richard Birdwell  
2804 Red Wolf Drive  
Fort Worth, TX 76244

Shushok & McCoy, Inc.  
2637 Ira E. Woods, Suite 100  
Grapevine, TX 76051

  
Mary Jo Foreman, an employee of  
Marquis Aurbach Coffing

MARQUIS AURBACH COFFING

10001 Park Run Drive  
Las Vegas, Nevada 89145  
(702) 382-0711 FAX: (702) 382-5816